

REMARKS

Claims 1-33 are pending. In the Final Office Action mailed April 10, 2008 ("OA"), the Examiner rejected claims 1-33. With this response, Applicants amend claims 19, 21, 22, 26, 28, and 29 for clarification purposes only. Applicants respectfully traverse the rejections and request reconsideration based on the following remarks.

In addition, Applicants do not necessarily agree with or acquiesce to the Examiner's characterization of the claims or the prior art, even if those characterizations are not addressed herein.

Amendments to the Claims

Applicants amend claims 19, 21, 22, 26, 28, and 29 to correct the dependencies of these claims. In the Response dated December 21, 2007, these claims were inadvertently updated to depend on the wrong claims. With this response, Applicants amend the claims to reflect their original dependencies.

Because the Examiner's rejection appears to be based on the original dependencies of claims 19, 21, 22, 26, 28, and 29, Applicants respectfully submit that the Examiner would not have to conduct a new search according to these amendments.

Claim Rejections under 35 U.S.C. §103

Claims 1, 2, 4, 6-10, and 13-33

The Examiner rejected claims 1, 2, 4, 6-10, and 13-33 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Publication No. 2003/0033211 ("Haines") in view of U.S. Patent No. 6,026,390 ("Ross"). Applicants respectfully traverse the rejection.

When making a determination of obviousness, the Examiner must (1) determine the scope and content of the prior art, (2) ascertain the differences between the claimed invention and the prior art, and (3) resolve the level of ordinary skill in the pertinent art. MPEP § 2141 (II), 8th Ed., Rev. 6 (Sept. 2007) (citing *Graham v. John Deere Co.*, 383 U.S. 1 (1966)). According to this section, “[a]scertaining the differences between the claimed invention and the prior art requires interpreting the claim language, see MPEP § 2111, and considering both the invention and the prior art as a whole.” MPEP § 2141 (II)(B) (emphasis added). Further, the MPEP requires the Examiner to consider the claims as a whole by reciting “[i]n determining the differences between the prior art and the claims, the question under 35 U.S.C. 103 is not whether the differences themselves would have been obvious, but whether the claimed invention as a whole would have been obvious.” MPEP 2141.02 (I) (citing *Stratoflex, Inc. v. Aeroquip Corp.*, 713 F.2d 1530 (Fed. Cir. 1983)).

When an Examiner evaluates the references, according to MPEP § 2141.02 (VI), “[a] prior art reference must be considered in its entirety, i.e., as a whole, including portions that would lead away from the claimed invention.” MPEP § 2141.02 (VI) (citing *W.L. Gore & Assocs., Inc. v. Garlock, Inc.*, 721 F.2d 1540 (Fed. Cir. 1983), *cert. denied*, 469 U.S. 851 (1984)). Further, MPEP § 2143.01 (VI) recites “[i]f the proposed modification or combination of the prior art would change the principle of operation of the prior art invention being modified, then the teachings of the references are not sufficient to render the claims *prima facie* obvious.” MPEP § 2143.01 (VI) (citing *In re Ratti*, 270 F.2d 810, 123 USPQ 349 (CCPA 1959)) (emphasis added). Based on the

MPEP and its supporting case law, Applicants respectfully request that the Examiner reconsider the rejection.

Claim 1 recites “[a] position budgeting and control system for evaluating and controlling human resource budgets, comprising: ... at least one data base containing human resource data relating to human resource objects; and a commitment engine, said commitment engine retrieving human resource data from said at least one data base and evaluating a human resource budget for a given human resource object for a predefined period of time based on said retrieved human resource data, said commitment engine further storing a result of said evaluation, monitoring said human resource budget during said predefined period of time, and providing an automatic notification to a user based on said monitoring” (emphasis added). Applicants respectfully submit that the cited prior art fails to render claim 1 as obvious.

Haines is directed to a purchase incentive program that involves manufacturers, retailers, and consumers. Haines at page 1, paragraph 0002 (hereinafter notated as 1:0002). This purchase incentive program allows for manufacturers to match their item identifiers with the identifiers of the retailer's corresponding items. *Id.* This allows manufacturers to track and analyze consumer purchases. *Id.* at 1:0006. Further, the purchase incentive program provides consumers of these items with the ability to analyze and budget for the consumer's intended purchases of only these listed items over a budget period. *Id.* at 16:0136.

To reject the claims, the Examiner used Haines analyzing and budgeting of consumer purchases of specific items to reject claim 1. OA at page 3-4. But the Examiner acknowledged that Haines fails to disclose analyzing and budgeting based on

human resource data. *Id.* at 4. To overcome Haines's deficiencies, the Examiner used Ross for its disclosure concerning the need to budget for employees in a department.

But one of ordinary skill in the art would not have reason to combine Ross's budgeting for employees in a department into Haines's analyzing and budgeting of consumer purchases of specific products in order to render claim 1 obvious. First, incorporating Ross into Haines would destroy the purpose of Haines's purchase incentive program. Haines's purchase incentive program is designed to allow consumers the ability to budget for specific items, associated with manufacturers and retailers, located within the item database—not budget for everything associated with the operation and structure of a department. Budgeting for an entire department is significantly more complex than budgeting for a single person because it involves allocating for resources outside of purchasing specific items, such as incoming and outgoing employees, changing employee benefits, stock option purchasing, insurance, etc. By expanding Haines's simple consumer budgeting plan for only those listed items corresponding with specific retailers and manufacturers to now include Ross's much more sophisticated budgeting plan for an entire department would drastically exceed the scope of budgeting set forth in Haines.

Further, the Examiner's purported combination would be providing a consumer with the ability to monitor human resource data. This combination would appear to be counterintuitive because the consumer would only be concerned with his own purchases and not for monitoring human resource data for a plurality of people within a department. Therefore, one of ordinary skill in the art would not have a reason to

combine Ross into Haines to render claim 1 as obvious. Accordingly, Applicants respectfully submits that claim 1 is patentable over the cited art.

Claims 2, 4, 6-10, and 13-15 depend on claim 1 and are patentable for at least the same reasons as claim 1.

Independent claims 16 and 23 recite language similar to that of claim 1 and are patentable over the prior art for at least the same reasons as claim 1. Claims 17-22 and 24-29 depend on claims 16 and 23, respectively, and are patentable for at least the same reasons as claims 16 and 23.

Claim 3

The Examiner rejected claim 3 under 35 U.S.C. § 103(a) as being unpatentable over Haines in view of Ross, further in view of U.S. Patent No. 5,600,554 ("Williams"). Applicants respectfully traverse the rejection.

Claim 3 depends on independent claim 1. As shown in the analysis above, claim 1 is patentable over Haines in view of Ross. Williams fails to overcome the deficiencies of Haines in view of Ross. Williams provides a computer software application for securing, integrating, and manipulating employee payroll and human resource information. But, like Ross above, one of ordinary skill in the art would not have a reason to combine Williams employee payroll applications into Haines's simple consumer budgeting plan for only those listed items corresponding with specific retailers and manufacturers. Therefore, Haines in view of Ross and Williams fails to disclose or suggest the features of independent claim 1. Because claim 3 depends on claim 1, claim 3 is patentable over the cited art for at least the same reasons as claim 1.

Claim 5

The Examiner rejected claim 5 under 35 U.S.C. § 103(a) as being unpatentable over Haines in view of Ross, further in view of Official Notice. Applicants respectfully traverse the rejection.

Claim 5 depends on independent claim 1. As shown in the analysis above, claim 1 is patentable over Haines in view of Ross. The Official Notice fails to overcome the deficiencies of Haines in view of Ross because, at most, it only provides calculating an employee salary. Therefore, Haines in view of Ross and Official Notice fails to disclose or suggest the features of independent claim 1. Because claim 5 depends on claim 1, claim 5 is patentable over the cited art for at least the same reasons as claim 1.

Claims 11 and 12

The Examiner rejected claims 11 and 12 under 35 U.S.C. § 103(a) as being unpatentable over Haines in view of Ross, further in view of Ruth E. Thaler-Carter, *"EMA Model Defines Cost-Per-Hire as Part of Staffing Performance"*, HRMagazine, Dec., 1997, Vol. 42, Iss. 12, Pg. 51-54 (hereinafter "Thaler-Carter"). Applicants respectfully traverse the rejection.

Claims 11 and 12 depend on independent claim 1. As shown in the analysis above, claim 1 is patentable over Haines in view of Ross. Thaler-Carter fails to overcome the deficiencies of Haines in view of Ross. Thaler-Carter discusses a model for defining a cost-per-hire for employee positions to achieve a "better common indicator of the productivity of the recruiting effort." Thaler-Carter at Abstract/Summary and page 51. But Thaler-Carter fails to overcome the deficiencies of Haines in view of Ross

addressed above because one of ordinary skill in the art would not have a reason to combine Ross into Haines. Therefore, Haines in view of Ross and Thaler-Carter fails to disclose or suggest the features of independent claim 1. Because claims 11 and 12 depend on claim 1, claims 11 and 12 are patentable over the cited art for at least the same reasons as claim 1.

Conclusion

In view of the foregoing amendments and remarks, Applicants respectfully requests reconsideration and reexamination of this application and the timely allowance of the pending claims.

Please grant any extensions of time required to enter this response and charge any additional required fees to our deposit account 06-0916.

Respectfully submitted,

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